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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SENTIUS INTERNATIONAL, LLC

Case No. C-13-0825-PSG

Plaintiff,

SENTIUS'S OPENING CLAIM CONSTRUCTION BRIEF

VS

MICROSOFT CORPORATION

Defendant.

1
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1 **I. INTRODUCTION**

2 Sentius developed, marketed and licensed software for over 13 years. Sentius owns four
 3 patents that relate to database linking and updating software technology invented by Sentius'
 4 founder, Marc Bookman, and three other former Sentius employees. The inventors began their
 5 work in this area in 1991, filed for the first patent in February of 1995, and have continued to
 6 work as known experts in related fields. The patents-in-suit disclose and claim features
 7 incorporated into particular versions of Sentius's Richlink and Mikan technologies, which
 8 practiced the patented inventions. After Marc Bookman demonstrated the earlier technology to
 9 Microsoft in 1998, [REDACTED]

10 [REDACTED]
 11 [REDACTED] Ex. 1. After Marc Bookman
 12 demonstrated later technology to Microsoft in 2003, Microsoft employees again praised the
 13 technology.

14 The four patents-at-issue are U.S. Patent Nos. RE 40,371 (the "'731 Patent"), RE 43,633
 15 (the "'633 Patent"), 7,672,985 (the "'985 Patent"), and 8,214,349 (the "'349 Patent"). Exs. 2-5.
 16 The first patent family includes the '731 and '633 patent, and is directed to a specific method for
 17 linking source material to external reference materials for display. The '731 was originally
 18 issued as US Patent No. 5,822,720 in 1998, which was asserted in previous litigation against
 19 Flyswat, Inc., No. C00-02233 (SBA) (NDCA). In both instances where Judge Armstrong
 20 construed a term in that litigation that the parties now dispute (database and link), Sentius
 21 proposes an identical or simplified version of Judge Armstrong's construction. *See* Ex. 6
 22 (*Flyswat* Claims Construction Ruling). In both instances, Microsoft's proposed construction
 23 varies considerably from Judge Armstrong's.

1 In the *Flyswat* litigation, Judge Armstrong ultimately held that claims at issue there were
 2 invalid based upon 35 U.S.C. § 112. Sentius appealed and the parties settled out-of-court.
 3 Sentius filed a reissue application on February 24, 2005 to correct the §112 deficiencies
 4 identified by the district court. The ‘720 patent reissued on June 9, 2009 as ‘731. Before
 5 reissuing, the reissue patent went through a triple re-examination with an examiner, his
 6 supervisor and then an independent review by another examination team.

8 The ‘731 Patent teaches an indexing scheme for displaying content associated with
 9 specific terms and phrases in a document. The method taught by the ‘731 Patent is useful in
 10 many contexts, one exemplary use being foreign language learning. Fig. 2 illustrates a flow
 11 diagram for indexing and linking text to external references so that associated content may be
 12 retrieved and displayed in a pop-up window for a selected term or phrase, such as shown in
 13 Fig. 3. In particular, the starting and ending offset positions of the identified words or phrases of
 14 interest are determined and recorded in a lookup table. Along with such offset positions, a link
 15 to external materials is recorded in the lookup table. The link may be a dynamic link to an
 16 external dictionary. When a user points to a word, for example by right-clicking on it, the link is
 17 used to retrieve content from the dictionary associated with the word. That retrieved content is
 18 displayed in a pop-up window. The ‘731 patent claims priority to application serial
 19 no. 08/197,157 filed Feb 16, 1994.

22 The second patent family includes the ‘985 and ‘349 patents, and is directed to a specific
 23 method for automatically processing database content. Here again, dictionaries are used to link
 24 content for display associated with a given word. Building on the foundations of the first patent
 25 family, the second patent family stems from research work Sentius started in 1997-98, which led
 26 to release of commercial products in 1998-99. It discloses how dictionary content may be
 27 syndicated over a network so that the programs that use the dictionary to compare identified

1 words or phrases to its content in order to retrieve associated content from the dictionary can
 2 automatically receive any dictionary updates over the network. The patents in the second patent
 3 family have not been through any litigation. Sentius refers the Court to its tutorials for further
 4 background on the patents and technology at issue.
 5

6 II. LEGAL STANDARDS

7 The scope of a patent is determined by its claims. 35 U.S.C. § 112, ¶ 2; *Burke, Inc. v.*
 8 *Bruno Indep. Living Aids, Inc.*, 183 F.3d 1334, 1340 (Fed. Cir. 1999). Pursuant to the Supreme
 9 Court's Markman decision, the Court construes the scope and meaning of disputed claim terms
 10 as a matter of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389-90 (1996).

11 Patents are presumed to be written for persons skilled in the field of the invention.
 12 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc). For that reason, the
 13 proper construction of a disputed claim term requires interpreting the term as it would be
 14 understood by a skilled artisan at the time of the invention. *Innova/Pure Water, Inc. v. Safari*
 15 *Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004). In determining a term's proper
 16 meaning, “[a] court looks to ‘those sources available to the public that show what a person of
 17 skill in the art would have understood disputed claim language to mean,’” including “‘the words
 18 of the claims themselves, the remainder of the specification, the prosecution history, and
 19 extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and
 20 the state of the art.’” *Phillips*, 415 F.3d at 1314 (quoting *Innova*, 381 F.3d at 1116).

21 The components of the intrinsic evidence form a natural hierarchy of interpretive guides
 22 and outline a claim construction methodology in which the claims, the patent specification, and
 23 the prosecution history (to the extent it is in evidence) must all be reviewed to reach a proper
 24 understanding of the disputed claim terms. The claims form the first tier of the hierarchy and can
 25 “provide substantial guidance as to the meaning of particular claim terms” through context and
 26

1 by relation to other claims. *Phillips*, 415 F.3d at 1314-15. The remainder of the specification
 2 forms the second tier of the hierarchy. “[T]he specification is always highly relevant to the claim
 3 construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a
 4 disputed term.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).
 5 Finally, the third tier of intrinsic evidence is the prosecution history of the patent. The
 6 prosecution history, however, “often lacks the clarity of the specification and thus is less useful
 7 for claim construction purposes.” *Phillips*, 415 F.3d at 1317.
 8

9 Although the specification, prosecution history, and extrinsic evidence are available as
 10 tools for construing disputed claim terms, “the claim construction inquiry . . . begins and ends in
 11 all cases with the actual words of the claim.” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158
 12 F.3d 1243, 1248 (Fed. Cir. 1998) (citations omitted). The specification may inform the meaning
 13 of claim terms, but it does not change those meanings unless the patentee has chosen to be his
 14 own lexicographer by clearly setting out his intended meaning either expressly or by implication.
 15 *See Phillips*, 415 F.3d at 1321; *Vitronics*, 90 F.3d at 1582. Additionally, claims should not be
 16 interpreted by importing limitations from the specification into the claims. *See Kara Tech., Inc.*
 17 *v. Stamps.com, Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009) (“[W]e will not . . . import a limitation
 18 from the specification into the claims.”).
 19

20 Following from the above guidelines, several canons of construction emerge from the
 21 Federal Circuit’s decisions. First, the “claims, not specification embodiments, define the scope
 22 of patent protection.” *Kara Tech*, 582 F.3d at 1348. Similarly, claims are not limited to the
 23 preferred embodiment. *See id.* (“The patentee is entitled to the full scope of his claims, and we
 24 will not limit him to his preferred embodiment . . .”); *Phillips*, 415 F.3d at 1323 (“[A]lthough the
 25 specification often describes very specific embodiments of the invention, we have repeatedly
 26 warned against confining the claims to those embodiments.”); *Liebel-Flarsheim Co. v. Medrad*,
 27
 28

1 *Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004). Finally, patent claims are rarely interpreted in a
 2 manner that would exclude the examples disclosed in the specification. *See Verizon Services*
 3 *Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1305 (Fed. Cir. 2007) (“We normally do not
 4 interpret claim terms in a way that excludes disclosed examples in the specification.”); *Vitronics*,
 5 90 F.3d at 1583 (explaining that a construction that excludes the preferred embodiment “is
 6 rarely, if ever, correct and would require highly persuasive evidentiary support . . .”).

8 In addition to “intrinsic” evidence, the Federal Circuit has sanctioned the use of “extrinsic
 9 evidence” in the claim construction process to educate the court about the field of the invention
 10 and the viewpoint of a person of ordinary skill in that field. Extrinsic evidence “consists of all
 11 evidence external to the patent and prosecution history, including expert and inventor testimony,
 12 dictionaries, and learned treatises.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980
 13 (Fed. Cir. 1995), aff’d, 517 U.S. 370 (1996). While acknowledging the value of extrinsic
 14 evidence in some cases, the Federal Circuit has also warned against giving it too much weight.
 15 The use of extrinsic evidence must be tempered against the context provided by the intrinsic
 16 record. *See Phillips*, 415 F.3d at 1318.

19 **III. TERMS FOR CONSTRUCTION**

20 The parties disagree on the definitions for the following terms: (A) “database”;
 21 (B) “link”/“linking”; (C) “syndicating”/“syndicated”; (D) “receiving”/“received”; (E) “parsing”;
 22 (F) “term module”; (G) “processing module”; (H) “processor”; and (I) “module.”

23 **A. “Database”**

25 Claim Term	26 Sentius’ Construction	27 Defendant’s Construction
28 Database ('731/'633)	a collection of data with a given structure for accepting, storing and providing, on demand, data for at least one user	A collection of data organized and searchable via records and fields. A record is one complete entry in a database, e.g., Gerry Friesen, 12 West

1		21 Street, New York, NY 10010, 212-691-8215. A field would be the street address field, namely 12 West 21 Street.
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6 The parties' principal dispute regarding the term 'database' is whether a database is
 7 limited to a specific form of database that is organized and searchable by "records and fields," or
 8 can also include other forms of databases. Defendant has not clearly defined "records and
 9 fields," but it appears that Defendant proposes to limit the term 'database' to a relational
 10 database. Defendant cannot justify its negative, and ill-defined, limitation. In contrast,
 11 Plaintiff's proposed construction is identical to the construction that Flyswat and Sentius agreed
 12 to and the court adopted in the *Flyswat* litigation, which itself was identical to a general
 13 definition of the term from a 1994 technical dictionary.¹ The term "database" has also been
 14 similarly construed in at least two previous cases in the Northern District of California.²

15 Defendant's construction is improper because, contrary to the broad use of the term
 16 "database" in the specification, Defendant improperly excludes any database that cannot be
 17 broken into specific "fields" and "records" and it does not even clearly define what a field is.

18 ¹ In *Sentius Corp. v. Flyswat, Inc.*, the Court adopted the parties agreed construction for "database" as "a collection
 19 of data with a given structure for accepting, storing and providing, on demand, data for at least one user." The fact
 20 that both Sentius and Flyswat were able to agree on this same construction despite being on opposite sides of the
 21 lawsuit is further evidence that the construction was both reasonable and proper. *Level 3 Communications, LLC v.*
Limelight Networks, Inc., 589 F. Supp. 2d 664, 689 (E.D. Va. 2008) ("The fact that Plaintiff's proposed construction
 22 here was agreed upon by parties to an unrelated litigation that are non-parties here is useful, but certainly not
 23 dispositive." (footnote omitted)). See also Ex. 7, IBM Dictionary of Computing (1994), p. 165 ("database (1) A
 24 collection of data with a given structure for accepting, storing, and providing, on demand, data for multiple users.");
 25 Ex. 8, IEEE 100 The Authoritative Dictionary of IEEE Standards Terms, 7th Ed. (2000) ("database (data
 26 management) (software). A. A collection of logically related data stored together in one or more computerized
 27 files.").

28 ² See *MySpace, Inc. v. GraphOn Corp.*, 756 F. Supp. 2d 1218, 1232 (N.D. Cal. 2010) (construing "database" as "a
 29 collection of data with a given structure that can be stored and retrieved."); *Vasudevan Software, Inc. v. IBM Corp.*,
 30 2011 WL 196884, *4 (N.D. Cal. 2011) (construing 'database' as "a structured set of data"); see also *Linksmart*
Wireless Technology v. T-Mobile USA, Inc., 2010 WL 2640402 *12 (E.D. Tex. 2010) (construing "database" as "a
 31 structured set of data held in a computer").

1 Furthermore, Defendant's construction is confusing and circular because it defines a "record" as
 2 "one complete entry in the database" (without defining what a "complete entry" is) and limits the
 3 operation of databases to ones that operate having "complete entries."

4 Turning to the claims themselves, "[n]otably, the term 'relational' is not found anywhere
 5 in the patent claims, which lends support to Plaintiff's argument that the term 'database' is not
 6 limited to a relational database as advanced by Defendant."³

7 The specification confirms that the term database is used in its plain, broad sense, and is
 8 not restricted to a relational database or to a database organized and searchable by "records and
 9 fields." For instance, a relational database **12** is only one type of database described in the
 10 specification. In describing the operation of the exemplary preferred embodiment of the
 11 invention, the specification discloses various databases that would be excluded by Defendant's
 12 construction as neither are described as having "records" and "fields". A text file **10**, for
 13 example, is edited to create a "linked text database" that is further used to build a "wordified
 14 database **20**." The wordified database **20** in turn is parsed and an index (lookup table) is created
 15 that links parsed words and phrases to reference materials. *See, e.g.*, '731 Patent at 5:5-28; *see*
 16 *also*, 6:46-7:39. Thus, neither the linked text database nor the wordified database are described
 17 in the specification as having records or fields.

18 In contrast, Plaintiff's proposed construction is consistent with the open-ended use of the
 19 term in the specification and the plain meaning of the term, and expressly contemplates that a
 20 database may be a relational database but also may be any file, including a text file. *Id.* and '731
 21 Patent, claims 50-52 (further clarifying that the database may be a "relational database," an
 22 "electronic file," or an "electronic text"). Whereas both parties here agree that a database is an
 23 "organized collection of data" consistent with all dictionaries cited by either side, Defendants can
 24

³ *MySpace*, 756 F. Supp. 2d at 1227.

1 point to no reason to restrict the general term “database” to only a database that includes fields
 2 and records or requires “complete entries.” The ‘731 Patent does not even discuss “records” at
 3 all and refers to “fields” only in the context of data entry and display fields, not database fields.
 4

5 **B. “Link”/“Linking”**

6 Claim Term	7 Sentius’ Construction	8 Defendant’s Construction
9 a link to the at least one of 10 the plurality of external 11 reference materials/ links to 12 the external reference 13 materials (‘731/’633)	14 electronic connection to 15 one or more external 16 reference materials/ 17 electronic connections to 18 the external reference 19 materials	20 a pointer to data or 21 information or the location 22 of data or information in a 23 record that is different than 24 the originating record 25 / pointers to data or information or the location of data or information in a record that is different than the originating record

26 Sentius’s proposed construction of the term link captures its plain meaning, without any
 27 improper limitations. Plaintiff’s proposed construction is also substantively identical to the
 28 construction that Flyswat and Sentius agreed to and the court adopted in the *Flyswat* litigation,
 without limitations that neither party here proposes.⁴ The term “link” has also been similarly
 construed in at least one previous case in the Northern District of California.⁵ Moreover, the
Flyswat Court already rejected a definition of link, like Defendant’s, that would exclude
hyperlinks.⁶

29
 30 ⁴ See Ex. 6 (*Flyswat* Order) at 16 (accepting uncontested construction of link as “electronic connection”). The
 31 *Flyswat* Court imposed two limitations on the term ‘link’ – that it be ‘tagless’ and ‘media independent’ – but neither
 32 party in this action propose those limitations.

33
 34 ⁵ See *Informatica Corp. v. Business Objects Data Integration, Inc.*, 2005 WL 6220492 *12 (N.D. Cal. 2005) (There
 35 is no need to go beyond the plain and ordinary meaning here. The Court . . . construes the term “link” to mean:
connection.).

36
 37 ⁶ See Ex. 6, *Flyswat* Order at 19 (“Based on all of the intrinsic and extrinsic evidence, there is no support for
 38 Flyswat’s proposed definition of ‘linking’ which excludes ‘hyperlinks.’ The Court finds that ‘linking’ in the
 39 preamble does not exclude ‘hyperlinks.’”). Defendant’s construction would exclude hyperlinks because hyperlinks
 40 do not need to link to anything in a “record.”

1 Sentius and Microsoft part company in two fundamental ways. First, Microsoft proposes
 2 limiting the term “link” to a “pointer” rather than leaving it open-ended as “an electronic
 3 connection” as proposed by Sentius.⁷ At best, Microsoft’s only justification for limiting the term
 4 to a pointer would be to narrow improperly this open-ended claim term to an exemplary type of
 5 link shown in a preferred embodiment. However, in the absence of any compelling reason to do
 6 so, such as a clear disclaimer in the prosecution history, it is incorrect to limit a term to an
 7 example given in the preferred embodiment.⁸ More fundamentally, the specification describes
 8 that the link may be of various types and resolved dynamically, which would also negate limiting
 9 the link to a specific address in memory, because as the specification teaches the link may be to
 10 an entire dictionary. *See* ‘731 Patent at 7:16-19 (“In the case of language learning, the
 11 component words and phrases are linked to a foreign language dictionary.”); *see also id.* at 7:35-
 12 50 (describing a dynamic link to a dictionary wherein the associated references from the
 13 dictionary for a given word are resolved and displayed alongside the word only after the user
 14 right clicks on it).
 15

16 Indeed, the only time the term “pointer” is used in the specification in describing the
 17 operation of the preferred embodiment is in the context of a user’s pointing device such as a
 18 mouse. *Id.* at 7:40-42. “Pointer” is used in the context of links at 6:22-36; however, this is in the
 19 context of distinguishing prior art and broadens the use of the term to something beyond an
 20 address, rather than narrowing it. To the contrary, the patent here specifically envisions that
 21 links are not limited to static links.
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 27 ⁷ Microsoft has not defined the term “pointer”. To the extent that they mean “an address in memory,” that
 28 inappropriately narrows the meaning of the claim language.

28 ⁸ *See Kara Tech*, 582 F.3d at 1348 (“The patentee is entitled to the full scope of his claims, and we will not limit him
 to his preferred embodiment . . .”).

1 Thus, it would be wrong to limit the term “link” to a “pointer” to a specific address or
 2 location based on these citations, as proposed by Defendant. Not only is such a construction
 3 inconsistent with the breadth of the specification, but the dependent claims themselves make
 4 even clearer that the term “link” is used broadly and may include an address, a hyperlink or any
 5 other reference information used in retrieving selected reference materials for display. See ‘731
 6 Patent at claims 22-24. Defendant’s proposed construction would exclude hyperlinks, which can
 7 be dynamic and do not always point to an end address. To the contrary, dependent claim 22
 8 (which depends from asserted claim 8) specifically requires that the link is a hyperlink, showing
 9 both that the term “link” is broader than and contemplated to specifically include a hyperlink.⁹
 10 Moreover, dependent claim 23, also stemming from claim 8, specifically calls for the link being
 11 an address, to which Defendant’s proposed construction appears to be limited. Most importantly,
 12 dependent claim 24 contemplates that the link may be any reference information for retrieving
 13 the selected reference material. All of these dependent claims are squarely inconsistent with
 14 Defendant’s narrow proposed construction.

15 In addition to the broad use of the term ‘link’ in the specification, the extrinsic evidence
 16 shows that the term “link” encompassed various and unlimited electronic connections. For
 17 example, in PCT International Application WO 95/04974 at page 1 (pdf page 3), a patent cited in
 18 the ‘985 Patent’s prosecution, the term “link” was expressly contemplated to encompass “an
 19 instance of a relationship between two or more components” where a component is a “discrete
 20 unit of information.” Ex. 11. Similarly, the IBM Dictionary of Computing (1994) defines a link
 21 as an “association between two information nodes.” Ex. 7 at p. 386. Moreover, consistent with
 22

23
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 27 ⁹ “Hyperlink”, as used at the time of the ‘731 patent, was understood to be a broad term covering a variety of
 28 possible implementations, from the “simple pointers” disclosed in the specification, to the dynamic links described
 in PCT International Application WO 95/04974 at 1 and elsewhere. *See, e.g.*, Ex. 9 Viewing Dexter with Open Eyes,
 John J. Leggett and John L. Schnase (1994); Ex. 10, Light Hypermedia Link Services: A Study of Third Party
 Application Integration. Hugh C. Davis, Simon Knight, and Wendy Hall. (1994)).

1 the disclosure in the ‘985 Patent that the link can be dynamic, the reference captures the
 2 knowledge of one of ordinary skill in the art that a “dynamic link” can be computed “at the time
 3 that the result of the computation is needed.” Ex. 11. Moreover, the ‘349 patent specification,
 4 which also uses the term link, broadly describes that tags used for linking may be “a hyperlink
 5 that leads to additional annotational content; however additional tag structures can be used.”
 6 ‘349 at 9:9-11. Similarly, the ‘985 patent expressly contemplates that the ‘731 technology can
 7 be used by the RichLink processor to tag the document, see ‘985 at 7:34-44, and also that the
 8 specific content for display in the pop-up window may be selected after user clicks on the term
 9 (i.e the word or phrase), *see* ‘985 at 12:6-15, which further demonstrates that link in the look-up
 10 tables need not be a specific location of the final content to be displayed, as Defendant appears to
 11 suggest.
 12

13 Second, Defendant seeks to limit the term “link” to denote a relationship only between
 14 two “records.” Nothing in the specification requires that the reference material be a “record,”
 15 whatever that term means. Given Defendant’s construction of “database”, this would appear to
 16 bootstrap into the broad term ‘link’ a limitation that the link can only be between two relational
 17 databases. This proposal would directly contradict the specification, which shows a link between
 18 text in a structured text file (wordified database 20) to a dictionary, as explained in the
 19 “database” section of this brief. For that additional reason, Defendant’s proposed construction
 20 should be rejected.
 21

22 C. **“Syndicating/Syndicated”**
 23

24 Claim Term	25 Sentius’ Construction	26 Defendant’s Construction
27 Syndicating / syndicated 28 (*’985 Claims 1,11)	29 making content available 30 for automatic download 31 over the internet to one or 32 more remote subscribed 33 computers	34 Distributing/ 35 Distributed

1 Contrary to Defendant's construction, the specification and the context of the use of term
 2 'syndicating/syndicated' in the claim language makes clear that it does not refer to just any type
 3 of network distribution but rather specifically refers to the publication of content to computers
 4 that can automatically download and subsequently maintain synchronicity with the content.
 5

6 The '985/'633 Patents of the second patent family are succinctly titled "Automated
 7 Creation and Delivery of Database Content." The '985 specification calls the automated delivery
 8 of the database content "syndication." *See, e.g.*, '985 Patent at 2:14-16 ("Information from the
 9 database needed to create links and the rules for linking to database content are syndicated to
 10 remote servers.").
 11

12 As described in the specification, "a content publisher wishing to provide links from
 13 words and phrases in a document to the supplemental information in the database installs an
 14 automated tagging engine (the RichLink Processor) within its network. The RichLink processor
 15 automatically downloads, from the central database, the data structures necessary to perform the
 16 high-speed tagging of the text and to execute tagging rules without requiring a connection to the
 17 database at the time of tagging..." '985 at 2:44-52. As the specification explains, the system
 18 maintains synchronization between new database content: "[t]he RichLink Processor performs
 19 routine synchronization of its data structures with the database to insure that changes to content
 20 within the database, tagging rules, or presentation rules are reflected locally." *Id.* at 2:52-55.¹⁰
 21

23
 24 ¹⁰ The RichLink Processor performs several operations on the text of a file that it processes. The text may be parsed
 25 and tagged when matches are identified between the parsed terms and terms occurring in the Lexicon Object for
 26 specified dictionaries. '985 Patent at 9:1-14. The RichLink Processor module enables the automatic linking of
 27 external information by using processing rules and syndicated content to determine whether or where a particular
 28 document page should be processed to identify what terms should be cross-referenced to supplemental content based
 upon the syndicated lexicon object data and template object data. '985 Patent at 8:35-67. ("The RichLink Processor
 interacts with the Template Object 930 to identify the rules that should be used in processing and the Lexicon Object
 920 to identify what terms should be tagged in the source text."). As the specification explains, "[t]he Lexicon
 Object provides a local representation of the Term Database for use by the RichLink Processor 910 so a direct
 connection to the Term Database is not required..." and "[t]he Template Object provides a local representation of
 the Template that contains the rules for processing and linking a file so a direct connection to the Template Database
 is not required..." '985 Patent at 9:30-35 and 9:37-52.

1 As the specification further explains, the Lexicon and Template Manager modules
2 automatically access the Term and Template Databases to obtain the latest versions of the
3 Lexicon and Template Objects and further perform periodic refreshes of the Lexicon and
4 Template objects to maintain synchronization between the central databases and the information
5 they maintain locally. Further, the specification explains that the Lexicon and Template
6 Manager modules must log into the databases “so that the server only obtains lexicons and
7 templates for which they have privileges.” ‘985 Patent at 9:59-10:14. Further supporting that
8 the term “syndicating” as used in the patent refers to the automatic delivery of the authorized
9 content, each independent claim is directed to a computer implemented method/system. *See*
10 ‘985 patent at claims 1, 11, 20, 21 and 36; *see also* ‘349 patent at claims 1, 15, 28, 31, 45. Thus
11 each claim specifically requires that the computer (acting through modules) perform the steps of
12 sending or receiving the syndicated content.

13 Thus, the terms “syndicating” and “syndicated” do not merely refer to “distributing”
14 content over the internet, as suggested by Defendant. Merely “distributing” content over the
15 internet would encompass sending the database objects via emails or via an FTP link, where the
16 user would have to install the files. No such user involvement is contemplated in the syndicating
17 system of the present invention. Indeed, such type of prior art was expressly distinguished
18 during the prosecution of the ‘985 patent. Specifically, in April 1, 2009 Office Action, the
19 USPTO rejected pending claims 49, 58-59 and 68 under 35 U.S.C. §102(e) as anticipated by the
20 U.S. Patent Publications No. 2003/0033290 (“Garner”), in part on the basis that this reference
21 also taught syndicating one or more data objects representing data associated with a term
22 database to remote servers for linking content to terms. In its September 14, 2009 response,
23 Applicant pointed out that Garner provided a “tabulation function” that would allow a “data
24

1 table” to be “exported” to the remote computers and argued that this did not “syndicate” the data
 2 table to remote servers. Ex. 12 at p. 11. The rejection was subsequently withdrawn.
 3

4 Another reason that syndicating is not merely distributing the content over the network in
 5 any manner as suggested by Defendants is that without the ability for the remote computer to
 6 automatically download the available content, the system, which must be computer implemented,
 7 could not synchronize content as expressly contemplated by the specification as well as
 8 dependent claims 9 and 19 of the ‘985 patent and dependent claims 9 and 23 of the ‘349 patent.
 9

10 For all of the reasons above, the Court should reject Defendant’s position that syndication
 11 refers to any arbitrary form of distribution over a network, such as would be satisfied by sending
 12 the content via an email attachment for installation onto the remote computer by the email
 13 recipient, or likewise via an FTP link for a manual installation. The context of the term in the
 14 claim language and the specification makes clear that it does not refer to just any type of network
 15 distribution but rather specifically refers to the publication of content to authorized computers
 16 who can automatically download and subsequently maintain synchronicity with the content.
 17

18 D. **“Receiving”/“Received”**

19 Claim Term	20 Sentius’ Construction	21 Defendant’s Construction
22 Receiving / received 23 (‘349 patent)	24 obtaining and storing 25 automatically	26 Plain and ordinary 27 meaning, which does not 28 require or exclude 29 “obtaining and storing 30 automatically”

31 The specification of the ‘349 Patent is identical to the ‘985 patent and each of its
 32 independent claims similarly requires a computer implemented method/system. See ‘349 Patent
 33 at claims 1, 15, 28, 31 and 45. Just as the ‘985 patent requires the computers acting through
 34 software modules to perform the steps of syndicating the lexicon objects, so does the ‘349 Patent
 35 require that a computer obtain and store the lexicon objects. The conditions are the same, only
 36

1 the perspective of which computer is engaged in the action is different. Plaintiff's construction is
 2 consistent with the specification and claims language, and its ordinary meaning,¹¹ whereas
 3 Defendant's construction is exactly the opposite of the specification's teachings and the express
 4 claim language, since it would allow for a human implemented method of obtaining and storing
 5 the lexicon objects, rather than a computer implemented method as required by the claims.
 6

7 **E. "Parsing"**

8 Claim Term	9 Sentius' Construction	10 Defendant's Construction
11 parsing one or more documents to identify at least one term based on at least one rule ('985 claim 1, '349 claim 1)	12 breaking at least one document into segments to identify at least one term based on at least one rule 13 breaking at least one source document into segments to identify at least one term based on at least one predetermined rule	14 breaking at least one entire document into sentences, words and/or phrases to identify at least one term based on at least one pre-established criteria
15 16		

17 The parties dispute one basic issue with respect to the meaning of parsing. Defendants'
 18 proposed construction would require an entire document to be broken into "sentences, words
 19 and/or phrases," before a term is identified, which is a limitation nowhere found in the claim.
 20 The claim language makes it plain that the purpose of the parsing is to identify at least one term
 21 based on a predetermined rule. Nowhere does the claim recite, nor does the specification or
 22 prosecution history require, that the parsing of any given document must be done by first
 23 breaking the "entire" document into "sentences, words and/or phrases." Such a construction is
 24 also inconsistent with Microsoft's own dictionary definition of parsing, which defines parsing as
 25
 26
 27
 28

¹¹ See Ex. 7, IBM Dictionary of Computing (1994), p. 559 (receive (1) To obtain and store data.).

1 “break[ing] input into smaller **chunks** so that a program can act upon the information.”¹²

2 Caselaw confirms that parsing simply means breaking data into components whose content or
3 format can be analyzed, rather than breaking data into “sentences, words and/or phrases.”¹³

4 The ‘985 patent describes that the RichLink Processor uses the parsing function to
5 identify the portions of a document that should be processed to identify a term: “The RichLink
6 Processor interacts with the Template Object **930** to identify the rules that should be used in
7 processing and the Lexicon Object **920** to identify what terms should be tagged in the source
8 text. Tags in the page identify whether a page should be processed by the RichLink Processor or
9 not, *denote sections of a page to be processed*, and indicate the template that should be used in
10 processing that page/section.” ‘985 Patent at 8:51-58 (emphasis supplied).

11 Microsoft also proposes to construe the word “rule” as “criteria”, but offers no support
12 for this construction. “Rule” is a commonly understood term that does not require construction;
13 Microsoft does not explain what it means by “criteria,” which, if anything, is more in need of
14 construction than the term “rule.” Moreover, the use of the term “criteria” is confusing because
15 the ‘985 specification uses the term “criteria” in a completely different context from its use of the
16 term “rule.” The term “criteria” is used in the specification in the context of applying business
17 judgment in determining how to split terms and associated content into the various dictionaries
18 (‘985 at 4:14-17), whereas “rules” is used in the specification in the context of executing the
19 linking rules from which terms of interest are identified and content associated therewith
20 displayed based upon the information contained in the lexicon objections (*i.e.* the local

21

¹² Ex. 13, Microsoft Press Computer Dictionary. The Comprehensive Standard For Business, School, Library, and
22 Home (1994), page 292 (emphasis added). Plaintiffs understand this definition of parsing to be synonymous with
23 plaintiffs’ proposed construction, but prefer the term “segment” rather than the synonymous word “chunk” because
24 the former word is more clearly understood to a lay audience.

25

¹³ See *SimpleAir, Inc. v. AWS Convergence Technologies, Inc., et. al.*, 2011 WL 3880525 at *12-*13 (E.D. Tex.
26 2011) (construing “parsing said data with parsers” to mean “using computer software to break or divide data
27 received from an information source into components whose content or format can be analyzed, processed, or acted
28 upon”).

1 representation of the term dictionary). It is not clear why Microsoft seeks to construe the term
 2 “rule”, but nothing indicates its use in other than a plain and ordinary way that requires no
 3 further construction.

4 **F. MPF: “Term Module,” “Processing Module,” “Processor,” and “Module”**

5 **1. The “Module”/ “Processor” Limitations Are Not MPF**

7 The parties first dispute whether the module and processor limitations found in claim 11
 8 of the ‘985 patent and claim 15 of the ‘349 patent should be treated as “means plus function”
 9 limitations subject to 35 U.S.C. § 112, ¶ 6. They should not. The claims do not use the word
 10 “means,” and a claim limitation that does not use the word “means” triggers a strong
 11 presumption that § 112, ¶ 6 does not apply. *See Inventio AG v. ThyssenKrupp Elevator Americas*
 12 *Corp.*, 649 F.3d 1350, 1360 (Fed. Cir. 2011) (“In this case, the inventor did not draft the claims
 13 in “means for” format, and his decision to avoid the term “means” raises a strong presumption
 14 that the claimed “computing unit” connotes sufficiently definite structure to those skilled in the
 15 art.”); *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1369 (Fed. Cir. 2002). This
 16 presumption may be rebutted only by demonstrating that the disputed claim term fails to “recite
 17 sufficiently definite structure” or else recites “function without sufficient structure for
 18 performing that function.” *See CCS Fitness*, 288 F.3d at 1369 (quotations omitted); *Inventio*,
 19 649 F.3d at 1360 (defendant had “the burden to show that the ‘computing unit’ terms are so
 20 structurally devoid that we should rewrite them in means-plus-function format”). “What is
 21 important is whether the term is one that is understood to describe structure, as opposed to a term
 22 that is simply a nonce word or a verbal construct that is not recognized as the name of the
 23 structure and is simply a substitute for the term ‘means for.’” *Lighting World, Inc. v. Birchwood*
 24 *Lighting, Inc.*, 382 F.3d 1354, 1360 (Fed. Cir. 2004).

1 The Federal Circuit has held that when “the structure-connoting term [] is coupled with a
 2 description of the [term’s] operation, sufficient structural meaning generally will be conveyed to
 3 persons of ordinary skill in the art....” *Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d
 4 1311, 1320 (Fed. Cir. 2004). The Federal Circuit has specifically observed:
 5

6 In considering whether a claim term recites sufficient structure to avoid
 7 application of § 112, ¶ 6, we have not required the claim term to denote a specific
 8 structure. Instead, we have held that it is sufficient if the claim term is used in
 9 common parlance or by persons of skill in the pertinent art to designate structure,
 even if the term covers a broad class of structures and even if the term identifies
 the structures by their function.

10 *Inventio AG*, 649 F.3d at 1359–60.

11 Here, the term “module” connotes sufficient structure in the mind of one of ordinary skill
 12 in the art because it refers to a part of a program that contains instructions relating to a specific
 13 function or related functions. *See IBM Dictionary of Computing* (1994), Ex. 7, at 439 ([4] “a
 14 part of a program that usually performs a particular function or related functions;” [7]
 15 “[s]ynonymous with program unit.”).

16 Courts regularly construe module claims to avoid section 112, ¶6. In *TecSec, Inc. v.*
 17 *International Business Machines Corp.*, 731 F.3d 1336, 1348 (Fed. Cir. 2013), the Federal
 18 Circuit, reversing a district court, rejected the court’s holding that a ““digital logic means” is a
 19 means-plus-function limitation because the “**modules**,” “systems,” and “means” recited in the
 20 claim are generic structures.” *Id.* at 1347 (emphasis added.) The claim recited an “encryption
 21 algorithm module” and a “decryption algorithm module.” *Id.* at 1339. The Federal Circuit
 22 emphasized that:

23 The claim also recites that the digital logic means is comprised of structural
 24 elements, including a system memory and **specific modules** and subsystems.
 25 While the defendants assert that those elements are purely generic, we see no
 26 reason to hold that those elements are so devoid of structure as to implicate § 112,
 ¶ 6.

27 *Id.* at 1348 (emphasis added); *see also*, e.g., *Wi-Lan USA, Inc. v. Alcatel-Lucent USA, Inc.*, 2013
 28 WL 4811233 (S.D. Fla. 2013) (finding ‘module’ provided sufficient structure to avoid

1 section 112, ¶ 6). Indeed, in numerous Northern District of California cases the term “module”
 2 was either left undefined or was defined as a discrete hardware or software component. *See, e.g.*
 3 *Jajah Inc v. Stanacard LLC*, 2010 WL 1838970 *17 (N.D. Cal. 2010) (construing “a telephone
 4 number detection module for detecting an assigned telephone number dialed by the caller” as “a
 5 discrete component of hardware or software or both that performs the function of detecting an
 6 assigned telephone number dialed by the caller.”); Ex. 14, *Friskit, Inc. v. Realnetworks, Inc.*, 3-
 7 03-cv-0585 (N.D. Cal. May 20, 2005) (construing “network server module” as “a software
 8 module located on the serverside in a client-server network, capable of performing a stated task
 9 or function”).
 10

11 The same is true for processor. *See, e.g.*, *Wi-Lan*, 2013 WL 4811233 (holding that the
 12 “processor” claims, like the module claims, are “not means-plus-functions limitations”).
 13 Further, because the claim language does not use the term “means,” “[i]n the absence of any
 14 compelling evidence of the understanding of one of ordinary skill in the art, the presumption that
 15 Section 112(f) does not apply is determinative.” *Id.* at *42. *See, e.g.*, *Apple v. Samsung
 16 Electronics Co., Ltd.*, 2013 WL 1502181 at *10-*11 (N.D. Cal. 2013) (construing “action
 17 processor” as “program routine(s) that perform the selected action on the detected structure.”)

18 **2. Alternative Means-Plus-Function Construction**

19 Alternatively, if the module and processor terms are interpreted to be means-plus-
 20 function limitations (which they are not), there is no basis for Microsoft’s position that there is
 21 no corresponding structure. Courts have regularly found that a “module” is the actual structure
 22 described in the specification which corresponds to the function claimed by means language.
 23 *See, e.g.*, *On Demand Mach. Corp. v. Ingram Indus., Inc.*, 442 F.3d 1331, 1340–41 (Fed. Cir.
 24 2006) (affirming claim construction that found “computer module” to be the structure for “means
 25 for a customer to visually review said sales information”); *Foundry Networks v. Lucent Techs.,*
 26 *Inc.*, 2005 WL 6217420, at *7-*9 (E.D. Tex. May 24, 2005) (finding “voice communication
 27 module” to be the structure for “means for forwarding an incoming call” limitations); *Roche*
 28

1 *Diagnostics Corp. v. Apex Biotechnology Corp.*, 455 F. Supp. 2d 840, 868 (S.D. Ind.
 2 2005) (finding “a removable and/or reinsertable read-only-memory (“ROM”) chip and/or
 3 module” to be the structure for “pluggable memory key means” limitation); *Alcatel USA*
 4 *Sourcing, Inc. v. Microsoft Corp.*, 2008 WL 3914889, at *18, 20, 21 (E.D. Tex. 2008) (finding a
 5 processor using a “locator module” to be structure for “means for determining” and “means for
 6 identifying” and “device module” and the software executing it to be structure for “means for
 7 manipulating each received data or message”); *Visto Corp. v. Good Tech, Inc.*, No. 2:06-CV-
 8 039, 2008 WL 163576, at *11–12, 13 (E.D. Tex. Jan. 16, 2008) (finding “general
 9 synchronization module” to be the structure for “first [/second] means for generating
 10 first[/second] examination results from first [/second] version information” and “means for
 11 generating;” “synchronization start module” to be the structure for “means for initiating;” and
 12 communications module” to be the structure for “means for downloading data”), *constructions*
 13 adopted by *Visto Corp. v. Research in Motion, Ltd.*, 623 F. Supp. 2d 756 (E.D. Tex.
 14 2008); *Autobytel, Inc. v. Dealix Corp.*, 2006 WL 155683, at *8–9 (E.D. Tex. Jan. 18,
 15 2006) (finding “process purchase request module,” “database access module,” “buyer-dealer
 16 association module,” and “network access module” to be structures for “means for identifying,”
 17 “means for creating,” and “means for communicating”).

18 Nor can Microsoft argue that there is a lack of algorithmic support for how the module is
 19 implemented. “[T]he corresponding structure for a § 112 ¶ 6 claim for a computer-implemented
 20 function is the algorithm disclosed in the specification.” *Harris Corp. v. Ericsson Inc.*, 417 F.3d
 21 1241, 1253 (Fed. Cir. 2005). “The usage ‘algorithm’ in computer systems has broad meaning,
 22 for it encompasses in essence a series of instructions for the computer to follow.” *Typhoon*
 23 *Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1384 (Fed. Cir. 2011) (internal quotation
 24 omitted). The algorithm required to be disclosed by the specification can be expressed “in any

understandable terms including as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.” *Finisar Corp. v. DirectTV Grp., Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008). “For computer-implemented procedures, the computer code is not required to be included in the patent specification,” but the disclosure only need be sufficient “for a person of skill in the field to provide an operative software program for the specified function.” *Typhoon Touch*, 659 F.3d at 1385. Thus, Courts have regularly found that even broadly described steps provide sufficient algorithmic support.

G. “Term Module” and “Processor”

Claim Term	Sentius’ Construction	Defendant’s Construction
term module ('985 claim 11) ¹⁴	<p>a computer processor in conjunction with executable code for instructing the computer processor to parse one or more documents to identify at least one term based on at least one rule</p> <p>Alternatively (if Court considers term to be MPF),</p> <p>Function: parsing one or more documents to identify at least one term based on at least one rule</p> <p>Structure: a computer processor in conjunction with executable code for instructing the computer processor to parse one or more documents to identify at least one term based on at least one rule, as described in the specification and equivalents thereof</p>	<p>Means Plus Function</p> <p>Function: “breaking at least one entire document into sentences, words and/or phrases to identify at least one term based on at least one pre-established criteria”</p> <p>Corresponding Structure: none</p>

¹⁴ The parties agree that the same construction applies to ‘processor’ ('349 claim 15).

1 The claim element “term module” denotes the executable code that instructs the
 2 processor to parse one or more documents to identify at least one term using at least one rule.
 3 Therefore there is no real reason for the Court to construe the term. If the Court determines any
 4 construction is needed, the Court should accept Plaintiff’s proposed construction which follows
 5 the claim language.

7 Should the Court determine that the claim element “term module” requires means-
 8 function treatment, it should find the structure to be a computer processor in conjunction with
 9 executable code for instructing the computer processor to parse one or more documents to
 10 identify at least one term based on at least one rule, as described in the specification and
 11 equivalents thereof.

13 Here, the specification describes the exemplary steps of using natural language parsing
 14 for the parsing and using a compare function between a parsed word and the lexicon object data
 15 to see if the term is or is not within the lexicon (*i.e.* apply a rule) in order to determine whether or
 16 not the term needs to be flagged for linking to additional content. The specification’s description
 17 provides the algorithmic support, including the exemplary steps of using natural language
 18 parsing for the parsing and using a compare function between a parsed word and the dictionary
 19 lexicon to see whether the term is or is not within the lexicon (*i.e.* apply a rule) in order to
 20 determine whether or not the term needs to be flagged for linking to additional content.
 21 Moreover, the ‘985 patent is clear that the RichLink Processor may use the automated methods
 22 disclosed in the ‘720 patent (which is the predecessor to the ‘731 patent and shares the same
 23 specification therewith, and which discloses using the natural language parsing as well as tagging
 24 using look-up tables rather than in-document tagging). *See e.g.*, ‘985 at 7:35-52; 8:35-9:21.
 25 Thus, the Defendant’s assertion that no structure for this module should be rejected.

H. “Processing Module” and “Module”

Claim Term	Sentius' Construction	Defendant's Construction
processing module (‘985 claim 11) ¹⁵	<p>a computer processor in conjunction with executable code for instructing the computer processor to identify content for the at least one term</p> <p>Alternatively (if Court considers term to be MPF),</p> <p>Function: identifying content for the least one term</p>	<p>Means Plus Function</p> <p>Function: “identifying content for the at least one term”</p>

For all of the same reasons as above for the claim element ‘term module’, the claim element “processing module” does not need to be construed because the term “module” connotes sufficient structure as a hardware/software component that performs the recited function (here of identifying content for the at least one term.) If the Court determines that any construction is needed, it should adopt the Plaintiff’s construction, which is consistent with the specification and with the plain and ordinary meaning “module.”

If the Court determines that the term requires means plus function treatment then it should find its structure to be executable code instructing the computer processor to identify relevant content for an identified term as described in the patent, and its equivalents. The '985

¹⁵ The parties agree that the same construction applies to module ('349 claim 15).

1 patent describes that the RichLink processor applies linking rules contained in the syndicated
 2 lexicon and/or template object data to identify content associated with the identified term for
 3 display alongside the identified term. ‘985 at 7:35-44; 8:35-59; 9:1-14; 9:19-27; 9:36-51. The
 4 Defendant’s assertion that no structure is shown for this term should be rejected.
 5

6 IV. ORDER OF CLAIMS

7 Microsoft argues that all claims of ‘731, all claims of ‘633, claim 1 of ‘985 and claims 1
 8 and 31 of ‘349 must be performed in the order written, citing only to pages 7-8 of the *Flyswat*
 9 claim construction order. There is no merit to this argument. “Unless the steps of a method
 10 actually recite an order, the steps are not ordinarily construed to require one.” *Interactive Gift*
 11 *Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1342 (Fed. Cir. 2001). Courts look “to the
 12 claim language to determine if, as a matter of logic or grammar, [the steps] must be performed in
 13 the order written.” *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed. Cir. 2003). If not,
 14 courts “next look to the rest of the specification to determine whether it directly or implicitly
 15 requires such a narrow construction.” *Id.* (internal citations omitted). If it does not, there is no
 16 order requirement. *See id.*

17 The *Flyswat* Court only held that Claim 8 of the ‘720 Patent must be performed in the
 18 order written, and it based this decision solely on a finding that two sequences must be
 19 performed in order (8.2 before 8.3 and 8.7 before 8.9) and because Sentius did not offer any
 20 other possible orders. In the first place, Claim 8 of the asserted ‘731 patent, which is a reissue of
 21 the predecessor ‘720 patent, rewrites the original claim 8 steps of the ‘720 patent, and adds the
 22 “linking”, “displaying” and “retrieving” steps, so the *Flyswat* Order does not apply. Claim 8
 23 does not actually recite an order, so ordinarily it should not be construed to require one. *See*
 24 *Interactive Gift*, 256 at 1342. The steps are not all required as a matter of logic or grammar to
 25 occur in order. For example, steps 1-5 do not need to be done before steps 6-9, and could even
 26

be interleaved within steps 1-5, and many orders are possible. Even if 8.2 needs to precede 8.3 and 8.7 needs to precede 8.9, which is all the *Flyswat* Court held with respect to the prior patent, the fact that *some* steps must be performed in a specific order does not mean that the *other* steps must be performed in any particular order. *See, e.g., Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1345 (Fed. Cir. 2008) (holding that some claimed steps needing to be performed in order does not require all claimed steps be performed in order); *accord In re Cygnus Telecommunications Technology, LLC, Patent Litigation*, 481 F. Supp. 2d 1029 (N.D. Cal. 2007).

Finally, Microsoft has not pointed to anything in the specification or prosecution history that directly or implicitly requires such a narrow construction. Thus, there is no reason to hold that claim 8 of ‘731 requires every step to be performed in the order written. It is even less clear why Microsoft states that the other claims must be performed in order, which have no relationship to the *Flyswat* ruling.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 6, 2013 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ. L.R. 5-1(h)(1). A copy has been sent to the ADR Unit.

By: s/Seth Ard
Seth Ard